

Detailed Action

**MOBILE COMMUNICATION BASE STATION DEVICE AND QOS
CONTROL METHOD AND PROGRAM THEREOF**

Response to Arguments/Remarks

1. Claims 1, 3, 5 – 6, 8, 10, and 12 are pending in this application
2. A Pre-Appeal Brief Review was held on 12/14/2009, in response to a Pre-Appeal Brief Review Request made by the Applicant on 9/9/2009.
3. At the review, Applicant's arguments were carefully considered, and it was decided to re-open prosecution.
4. The Examiner finds after consideration, search and consultation with the Applicant, that claims 1, 3, 5 – 6, and 8 are allowable, but the specification does not support the requisite statutory subject matter as cited in claims 10 and 12 and Examiner rejects these claims as presented in this Office Action.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 10 and 12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
3. Claim 10 and 12 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process.

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4. Claim 10 cites a QoS control program which is a software function, and therefore not one of the four statutory categories required by 35 U.S.C. 101.

Allowable Subject Matter

5. Claims 1, 3, 5 – 6, and 8 in the application are allowable.

6. The following is a statement of reasons for the indication of allowable subject matter:

The application is directed to a QoS control method where a mobile communication base station device obtains the state information of the wireless channels, sets the priorities to the data received from the wireless channel and then uses priority levels to appropriately throttle the data to a bandwidth relayed to an ATM channel of like bandwidth which is connected to the mobile communication base station device, as prescribed in claim 1. In a similar manner, as prescribed in claim 3, a delay associated with coding and decoding the wireless channel data is used to throttle the data between the ATM and wireless channel.

7. Though the prior art (see, for example, Kazutoshi et al. U.S. Patent 5978380, previously cited) teaches of matching channel capacity volume and other prior art (see, for example Raychaudhuri (U.S. Patent 563871), previously cited) teaches across connecting network traffic across different physical mediums i.e. wireless and ATM, none of the prior art teaches of throttling traffic using priority levels (claim 1) or (coding/decoding delays) delays (claim 3) as is taught by the applicant.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HENRY BARON whose telephone number is (571)270-1748. The examiner can normally be reached on 7:30 AM to 5:00 PM E.S.T. Monday to Friday.

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9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. B./
Examiner, Art Unit 2462
HB

/Seema S. Rao/
Supervisory Patent Examiner, Art Unit 2462